



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 176400

PRELIMINARY RECITALS

Pursuant to a petition filed on August 24, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Wood County Human Services - WI Rapids regarding FoodShare benefits (FS), a hearing was held on September 14, 2016, by telephone.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid \$881 in FoodShare benefits from April 1, 2015 through October 31, 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By:

[REDACTED]
Wood County Human Services - WI Rapids
220 Third Avenue South
Suite 4
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner received FoodShare and BadgerCare Plus MA since November 2014.

3. On December 22, 2014, the petitioner received an “About Your Benefits” Notice informing him that if his total gross income exceeded \$1,265 in a month, he must report that change by the 10th day of the following month.
4. Petitioner’s gross income exceeded the amount of \$1,265 beginning in February 2015.
5. Petitioner failed to report the change in his gross income until October 2015.
6. Petitioner was paid FoodShare benefits in the amount of \$963 from April 1, 2015 through October 31, 2015.
7. Based upon his income, the petitioner was entitled to only \$112 in FoodShare benefits from April 1, 2015 through October 31, 2015 resulting in an overpayment of \$851.00.
8. The agency discovered the petitioner’s overpayments in July 2016 and on July 6, 2016 issued a FoodShare Overpayment Notice to the petitioner, which included a FoodShare Overpayment Worksheet for all of the months that the petitioner was overpaid.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error or even if the client error was unintentional. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); *FS Handbook*, §7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii). The FS Handbook specifically tells the agency worker to determine the overpayment by taking the income and expenses that would have been budgeted had the changes been reported correctly. Overpayments due to client error may be recovered for up to six years after discovery. *FS Handbook*, App. 7.3.2.1.

The Department submitted uncontroverted evidence of the petitioner’s gross wages, corroborated by the petitioner’s pay stubs, which established that the Department correctly calculated the petitioner’s overpayments. The Department’s FoodShare Overpayment Notice and Worksheet calculated the total overpayment of FoodShare benefits to be in the amount of \$851.00. The petitioner asserted that he did not realize that his employer had given him a raise and because he worked variable hours, he did not realize that his gross income had increased over the threshold limit of \$1,265. However, petitioner’s failure to take note of or report the increase in his gross monthly income from February through October 2015 does not negate the Department’s claim for overpayment.

CONCLUSIONS OF LAW

The Department correctly determined that the petitioner was overpaid \$881 in FoodShare benefits from April 1, 2015 through October 31, 2015 due to client error.

THEREFORE, it is

ORDERED

That the petitioner for review herein be, and the same hereby is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of September, 2016

\s_____
Kristin P. Fredrick
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 19, 2016.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability